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EXAMINER

FAULK, DEVONA E

ART UNIT PAPER NUMBER

2644

DATE MAILED: 03/25/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/589,391

Applicant(s)

GABARA ET AL.

Examiner

Devona E. Faulk

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on amendment filed on 11/5/2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-4,7-11,13-23,29-39,44 and 50-66 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-4,7-11,13-23,29-39,44 and 50-66 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

**DETAILED ACTION**

***Response to Arguments***

1. Applicant's remarks regarding claims 3,36 and 38 filed 8/25/04 are correct. It was due to an oversight that claims 3,36 and 38 were not discussed. The rejections of these claims were maintained.
2. Applicant's asserts that new claims 57-66 are previously objected to claims 31,35,52,56 rewritten in independent form. The examiner believed these claims would be allowable if rewritten in independent form, but upon further investigation the examiner asserts that Platt in view of Rho reads on the recited claim language.
3. The applicant has amended claims 1,8,18-23,29-30,44,50 and 51 and asserts that they are now in allowable form. The examiner disagrees and rejections follow.
4. Claims 5,6,12,24-28,40-43,45-49 have been cancelled.

***Claim Rejections - 35 USC § 103***

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

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6. Claims 1-4,7-11,13-23,29-35,38,39,44,50-66 are rejected under 35 U.S.C. 103(a) as being unpatentable over Platt (U.S. Patent 5,226,086) in view of Lindemann et al. (U.S. Patent 6,118,877) in further view Rho (U.S. Patent 6,086,541) in further view of Besserman (U.S. Patent 4,284,847).

Claims 1,8,19-23,44,57,61,62,66 share common elements.

Regarding claim 1,8,19,20-23,44,57,62,66 Platt discloses a method for remotely adjusting a hearing aid of a user, comprising the steps of

generating a command via a first computer at a first location (remote location 12; column 9, lines 5-14);

transmitting the command to a second computer at a second location over a remote data link (central office 16; column 9, lines 30-40);

sending the command from the second computer to a digital signal processor in the hearing aid (computer 16 sends command to dsp in hearing aid; column 9, lines 35-42; figure 1);

receiving a user response to the test tone over the remote data link (column 9, lines 5-14); and

adjusting the hearing aid based on the user response to the test tone, wherein:

said adjusting step comprises the steps of:

transmitting the user response to the first computer over the remote data link (column 9, lines 5-14);

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and uploading the audiogram into the hearing aid of the user over the remote data link (column 15, lines 30-40); and

said audiogram is a compensation curve for adjusting performance characteristics of the hearing aid based on the user response (Platt teaches of an audiogram; column 9, lines 4-43; column 15, lines 30-40).

Platt fails to disclose outputting a test tone from the digital signal processor based on the command to a user of a telephone wearing the hearing aid (conventional testing involves playing a sequence of audible test tones to a user). Platt fails to teach that an audible test tone to be generated by the hearing aid in response to receipt of each command. The concept of a hearing aid generating test tones was well known in the art as taught by Lindemann. Lindemann discloses a hearing aid with insitu self-testing that generates test tones (See abstract). Thus it would have been obvious to have the hearing aid generate test tones as taught by Lindemann in order to have a hearing aid that can perform self-testing.

Platt as modified by Lindemann fails to disclose that the hearing test is initiated at a remote location from the user. However, the concept of initiating a hearing test at a location remote from the user was well known at the time of filing as taught by Rho. Rho discloses a method of testing a person's hearing ability via a telephone. The test program test various frequency ranges (column 2, lines 40-55). Thus it would have been obvious to initiate the hearing

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adjusting method remote from the user so that the user would not have to travel to an office location (See Rho, column 1, lines 51-59).

Platt as modified by Lindemann and Rho fails to teach of retrieving a stored audiogram from memory based on an accuracy of response. Platt teaches of an audiogram and sending that data to the hearing aid. (column 15, lines 30-40). This concept was well known in the art at the time of filing as taught by Besserman (U.S. Patent 4,284,847). Besserman discloses an audiometric testing, analyzing and recording apparatus wherein audiometric records of a number of people can be fetched or retrieved (column 2, lines 59-67) (reads on retrieving a stored audiogram from memory based on a response). Thus it would have been obvious to one of ordinary skill in the art at the time of the invention to retrieve an audiogram from memory as taught by Besserman in order to be able to quickly have available one's audiometric data.

All elements of claims 8,19-23,44,57,61,62,66 are met by Platt as modified by Lindemann and Rho. Platt teaches of two computers (26, 20; a computer obviously have keyboards), one computer at one location and another computer at another location (reads on local and remote computer). Platt teaches that one computer transmits parameters to the hearing aid (column 9, lines 44-47). Rho teaches of remotely initiating a hearing test at a location remote from the user, the user using the telephone keypad to response to test tones (column 2, lines 35-62) ..

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Claims 2 and 9 claims the method of claim 1 and the method of claim 8 respectively wherein said command is a DTMF tone. DTMF or dual tone multi-frequency tones, also known as Touch Tone is used for telephone signaling over the line in the voice frequency band to the call-switching center. Today DTMF is used for most call setup to the telephone exchange, at least in the Western world. Touch-tone is common with conventional and cellular phones. Platt discloses that the communication medium (18) could be a telephone system (column 9, lines 47-51).

Claims 3 and 10 claim the method of claim 1, and the method of claim 8 respectively wherein said receiving step comprises inputting a response to the command into the second computer via a keyboard attached to the computer. Platt teaches of two computers (26,20; a computer obviously have keyboards) (column 9, lines 4-34; Figure 1). Rho teaches of remotely initiating a hearing test at a location remote from the user, the user using the telephone keypad to response to test tones (column 2, lines 40-62).

Claims 4 and 11 claim the method of claim 1, and the method of claim 8 respectively, wherein said receiving step comprises inputting a response via a keypad on the telephone. Platt teaches of two computers and Rho teaches of remotely initiating a hearing test at a location remote from the user, the user using the telephone keypad to response to test tones (column 2, lines 35-62).

All elements of claim 7 are comprehended by claim 1.

All elements of claims 13 and 14 are comprehended by claim 8.

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All elements of claims 15-17 are comprehended by claim 14 (user response is stored in first computer (12) and sent to second computer (16) (column 2, lines 4-30; Figure 1).

Claim 29 claims the invention of claim 23, wherein the user enters each response via a keypad on a telephone and transmits the user responses to the computer system. Claim 30 claims the invention of claim 23, wherein the user enters each response via a keyboard attached to the computer system. Platt teaches of two computers (computers obviously have keyboards) (column 9, lines 4-34) and Rho teaches of remotely initiating a hearing test at a location remote from the user, the user using the telephone keypad to response to test tones (column 2, lines 35-62)..

All elements of claim 31-35, 50-56, 58-60, 63-65 are comprehended by Platt as modified by Rho. Platt teaches of two computers (computers obviously have keyboards), one computer at one location and another computer at another location (reads on local and remote computer). Platt teaches that one computer transmits parameters to the hearing aid. Rho teaches of remotely initiating a hearing test at a location remote from the user, the user using the telephone keypad to response to test tones (column 2, lines 35-62).

7. Claims 36-37 are rejected under 35 U.S.C. 103(a) as being unpatentable over Platt (U.S. Patent 5,226,086) in view of Lindemann et al. (U.S. Patent 6,118,877).



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Regarding claim 36, Platt discloses a hearing aid for a user (Figure 1), the hearing aid (30, Figure 1) comprising a processor adapted to

receive a sequence of one or more non-audible commands from a computer system (column 9, lines 10-30);

the computer system receives a response to each of one or more of the test tones from the user (Platt teaches of conventional manner of testing which involves playing a sequence of audible test tones to a user and the user responding to those test tones);

the computer system processes the one or more responses from the user to generate parameters for controlling operations of the hearing aid (an audiogram is taken using the data; column 9, lines 40-47); and

receive the parameters from the computer system to adjust the operations of the hearing aid (an audiogram is taken using the data; column 9, lines 44-65; the data is used to adjust operations of the hearing aid; column 15, lines 30-40).

Platt fails to teach that an audible test tone to be generated by the hearing aid in response to receipt of each command. The concept of a hearing aid generating test tones was well known in the art as taught by Lindemann. Lindemann discloses a hearing aid with insitu self-testing that generates test tones (See abstract;

Thus it would have been obvious to have the hearing aid generate test tones as taught by Lindemann in order to have a hearing aid that can perform self-testing.

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All elements of claim 37 are comprehended by the rejection of claim 36.

8. Claims 38-39 are rejected under 35 U.S.C. 103(a) as being unpatentable over Platt (U.S. Patent 5,226,086) in view of Lindemann et al. (U.S. Patent 6,118,877) in further view of Rho (U.S. Patent 6,086,541).

Claim 38 claims the invention of claim 36 wherein the processor receives the command sequence and the parameters from the computer system via a telephone. Claim 39 claims the invention of claim 38, wherein the command sequence and the parameters are transmitted to the processor from the telephone using DTMF signaling. Rho teaches of remotely initiating a hearing test at a location remote from the user, the user using the telephone keypad to response to test tones (column 2, lines 35-62). Thus it would have been obvious to initiate the hearing adjusting method remote from the user so that the user would not have to travel to an office location See Rho, column 1, lines 51-59).

#### *Claim Objections*

9. Claims 29-35,37-39, 50-60,63-65 are objected to because of the following informalities: The claims listed recite an invention when the claims they depend upon recites a method or a computer system. For example, claim 29 recites "the invention of claim 23" and claims 23 is reciting a method. Claim 29, as well as claims 30-35,37-39,50-60,should begin with "The method of claim" . Claims 63-65 should

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begin with "The computer system of claim" . Appropriate correction is required.

**Conclusion**

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Devona E. Faulk whose telephone number is 703-305-4359. The examiner can normally be reached on 8 am - 5 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Sinh Tran can be reached on 703-305-4040. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



**SINH TRAN**  
**SUPERVISORY PATENT EXAMINER**

DEF